



California Regional Water Quality Control Board

San Diego Region



Alan C. Lloyd, Ph.D.
Secretary for
Environmental
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

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NOTICE OF PROPOSED SETTLEMENT OF NPDES ENFORCEMENT

People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. City of San Diego, U.S. District Court, Southern District of California, Case No. 03CV1381-B (POR)

The California Regional Water Quality Control Board, San Diego Region (Regional Board) will consider settlement of this litigation against the City of San Diego (City) based on a Settlement Agreement negotiated by the Executive Officer. City has agreed to pay \$1.2 million to settle its potential liability for unauthorized discharges from sanitary sewers up to October 1, 2004. The payment would be made to the State Water Pollution Cleanup and Abatement Account and specified environmental projects. City also agrees that Regional Board shall be entitled to take enforcement action for sewer spills that occur after October 1, 2004 and other violations of Regional Board orders notwithstanding the provisions in any consent decree or settlement in related litigation between City and U.S. EPA and citizens' organizations.

The Regional Board will accept comments on the proposed settlement for a period of 30 days (until March 8, 2005). A copy of the Settlement Agreement is available for review on the Regional Board's web site (www.waterboards.ca.gov/sandiego) or by request.

BACKGROUND

The Regional Board sued City for sanitary sewer overflows that violated provisions of various orders of the Regional Board, including, but not limited to, waste discharge requirements for the City's Point Loma wastewater treatment plant, which implement applicable National Pollutant Discharge Elimination System (NPDES) regulations under the Clean Water Act, and non-NPDES requirements for the City's sewage collection system. Between February 20, 2001 and October 1, 2004, City reported 646 sanitary sewer overflows to the Regional Board. Of these, 40 resulted in beach closures.

This case is related to a citizens' suit against City brought by several environmental organizations, *San Diego BayKeeper and Surfrider Foundation, San Diego Chapter v. City of San Diego*, U.S. District Court, Southern District of California, Case No. 01-CV-0550-B (POR), and an enforcement case against City brought by U.S. EPA, *United States of America v. City of San Diego*, United States District Court, Southern District of California, Case No. 03-CV-01349K (POR), for the same or similar violations associated with sanitary sewer overflows. The Clean Water Act requires the state to be joined in any enforcement litigation by U.S. EPA against a municipality in the state. [Section 309 of the Clean Water Act, 33 U.S.C. 1319.]

U.S. EPA and the citizens' groups are negotiating with City for a Consent Decree involving operations and maintenance of, and capital improvements to, City's sewage collection system in order to reduce sanitary sewer overflows in order to resolve their respective lawsuits against City. The Consent Decree may include provisions for the discretionary imposition of liquidated damages for City's failure to accomplish promised tasks or reductions in sanitary sewer overflows.

The Regional Board, in closed session, authorized its Executive Officer and the Office of the Attorney General to undertake settlement negotiations with City for an agreement that would resolve the City's potential liability for past sanitary sewer overflows and would preserve the state's authority and discretion to regulate City's sewage treatment and conveyance systems and to take enforcement action for any violations of state or federal laws, regulations, plans, policies, or orders, regardless of any provisions of the anticipated Consent Decree or any other settlement reached between City and U.S. EPA or citizens' groups. The San Diego City Council has approved the settlement and payment.

TERMS OF PROPOSED SETTLEMENT

The City's payment of \$1.2 million would be allocated as follows:

- A. \$200,000 to the State Water Resources Control Board Cleanup and Abatement Account;
- B. \$260,000 to the Regional Board for the purpose of conducting a sediment toxicity source analysis water quality project in Chollas Creek;
- C. \$500,000 to the Regional Board for water quality related monitoring in San Diego Bay and Mission Bay; and
- D. \$240,000 to the Regional Board for the purpose of providing funding for water quality related projects implemented by the San Diego River Conservancy.

Other provisions of the Settlement Agreement preserve the Regional Board's enforcement authority and discretion regarding sanitary sewer overflows occurring after October 1, 2004, and over any other violations. The City reserves any defenses to enforcement action for sanitary sewer overflows occurring after October 1, 2004 or other violations that it would have been able to assert in the absence of any Consent Decree or settlement between City and U.S. EPA or citizens' groups.

CONTACT

Please direct comments on the proposed settlement to the Regional Board at:

9174 Sky Park Court, Suite 100, San Diego, CA 92124, Attention: John H. Robertus, Executive Officer.

Requests for copies of the Settlement Agreement should be directed to: Lori Costa at the above address or telephone (858) 467-2357.